

Nicholas Fitzgerald, Esq. NF/6129
Fitzgerald & Crouch, P.C.
649 Newark Avenue
Jersey City, NJ 07306
Counsel for Debtors
(201) 533-1100

Attorneys for Debtors -- I.D. # NF/6129

United States Bankruptcy Court
District of New Jersey -- Newark

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In re:

Chapter 7

John P. Toribio

Case # 10-47610-SLM

&

Adanurby Ortiz

Hearing Date: 4/9/19
Time: 10:00 a.m.

Debtors

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**ATTORNEY'S CERTIFICATION IN OPPOSITION TO ALUM & FERRER'S SECOND
DUPLICATE MOTION TO REOPEN CASE TO FILE REAFFIRMATION AGREEMENT
BETWEEN THE DEBTOR AND SELECT PORTFOLIO SERVICING, INC.**

I, Nicholas Fitzgerald, the above named debtors' counsel, hereby certifies as follows:

1. I make this certification in opposition to the motion filed by Alum & Ferrer in support of a motion to reopen the debtors' case to file a reaffirmation agreement between the debtor and Select Portfolio Servicing, Inc.

2. I was the counsel originally retained to represent the debtors in the above-entitled matter. I have never been relieved as counsel on this matter and a substitution of attorney was not filed in this case. As such, I still represent the debtors and I have an ethical responsibility to continue to do so. Exhibit A is a copy of the Pacer docket report showing that I am still

the counsel of record on this case.

3. It is my opinion that it is emphatically **not** in my clients' best interest to reaffirm their mortgage debt.

4. The debtors filed for Chapter 7 with my law firm and they received a discharge from their debts. They continued to pay their mortgage after their Chapter 7 case was filed and they appear to be paying their mortgage to the present time.

5. It appears that Select Portfolio Servicing, Inc. has refused to accurately and correctly report the debtors' post-petition mortgage payments on their credit report. It further appears to me that Select Portfolio Servicing, Inc. is using the fact that the debtors never reaffirmed their mortgage debt to refuse to accurately and correctly report the debtors' post-petition mortgage payments on their credit report.

6. Three important legal issues are raised herein. The first legal issue to be addressed is under what circumstances the Bankruptcy Court has jurisdiction to permit a reaffirmation agreement to be signed and filed over eight years after the debtors received a discharge. The second issue is that I believe that Select Portfolio Servicing, Inc's refusal to accurately and correctly report post-petition mortgage payments on the debtors' credit report is potentially in violation of the Fair Credit Reporting Act. The third issue is whether Select Portfolio Servicing, Inc's strong arm attempt to get the debtors to reaffirm a discharged debt [the potential deficiency in the event the debtors' failed to continue to make post-petition mortgage

payments] by refusing to accurately and correctly report the debtors' post-petition mortgage payments on their credit report unless they agree to reaffirm the debt constitutes a violation of the discharge against collecting on discharged debts.

7. This motion raises very complex legal issues and they should have been fully briefed -- and yet no brief was filed with the motion.

8. Moreover, this court already **denied** the identical request for relief. Exhibit B is a copy of the order denying the relief requested. No appeal was filed. See Exhibit A. It is baffling to me how it could possibly be procedurally correct when the time to appeal has expired, for counsel to file the identical motion a second time.

9. If the counsel who made the within motion wants to substitute in to reopen the within bankruptcy case to sue Portfolio Servicing, Inc. for violation of the injunction against collecting on discharged debts, I have no objection thereto. The debtors could separately hire counsel to represent them in a Fair Credit Reporting Act case against Select Portfolio Servicing, Inc. to be filed in District Court. I do, however, object to the debtors' reaffirming the debt in question because in my legal opinion it is not in the debtors' best interest.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: March 17, 2019

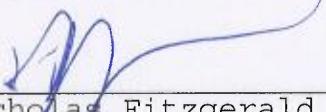

Nicholas Fitzgerald
Debtors' Counsel

Exhibit A -- Copy of the PACER Docket Report

**U.S. Bankruptcy Court
District of New Jersey (Newark)
Bankruptcy Petition #: 10-47610-SLM**

Assigned to: Judge Stacey L. Meisel
Chapter 7
Voluntary
No asset

Debtor disposition: Standard Discharge
Joint debtor disposition: Standard Discharge

Debtor
John P Toribio
28 Luhmann Terrace
Secaucus, NJ 07094
HUDSON-NJ
SSN / ITIN: xxx-xx-8808

Date filed: 12/04/2010
Date reopened: 12/18/2018
Date terminated: 02/20/2019
Debtor discharged: 03/11/2011
Joint debtor discharged: 03/11/2011
341 meeting: 02/04/2011

Deadline for objecting to discharge: 03/04/2011
Deadline for financial mgmt. course (db): 03/04/2011
Deadline for financial mgmt. course (jdb): 03/04/2011

represented by **Anjuli M. Cargain**
Fitzgerald & Associates, PC
649 Newark Ave.
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(201)533-1100
Fax : (201)533-0664
Email: nickslaw@gmail.com

Nicholas Fitzgerald
FITZGERALD & ASSOCIATES
649 Newark Ave
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(201) 533-1100
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Joint Debtor
Adanurby Ortiz
28 Luhman Terrace
Secaucus, NJ 07094
HUDSON-NJ
SSN / ITIN: xxx-xx-3795

represented by **Luis A Alum**
Alum & Ferrer
501 70th Street
Guttenberg
Guttenberg, NJ 07093
201-861-3393
Email: ngallego@alumferrer.com

Anjuli M. Cargain
(See above for address)

Nicholas Fitzgerald
(See above for address)

Trustee
Michael I. Okechuku
MICHAEL I. OKECHUKU, PC
28 N. Day Street.
First Floor
Orange, NJ 07050
862-444-7110

represented by **Michael I. Okechuku**
Blackburn, Ibezim & Okechuku, P.C.
936 Broad Street, Second Floor
Newark, NJ 07102
973-848-1400
Email: paneltrustee.michael@gmail.com

Filing Date	#	Docket Text
12/04/2010	<u>1</u> (49 pgs)	Chapter 7 Voluntary Petition Filed by Nicholas Fitzgerald on behalf of John P Toribio, Adanurby Ortiz. (Fitzgerald, Nicholas) (Entered: 12/04/2010)
12/06/2010	<u>2</u> (2 pgs)	Certificate of Credit Counseling filed by Nicholas Fitzgerald on behalf of Adanurby Ortiz, John P Toribio. (Fitzgerald, Nicholas) (Entered: 12/06/2010)
12/07/2010	<u>3</u> (3 pgs)	Appointment of Trustee. Trustee Michael I. Okechuku appointed to case. Meeting of Creditors 341(a) meeting to be held on 1/3/2011 at 12:30 PM at Suite 1401, One Newark Center. Financial Management Course Certificate Due 3/4/2011. Financial Management Course Certificate for Joint Debtor Due 3/4/2011. Last day to oppose discharge or dischargeability is 3/4/2011. (United States Trustee) (Entered: 12/07/2010)
12/08/2010		Receipt of filing fee for Voluntary Petition (Chapter 7)(10-47610) [misc,volp7a] (299.00). Receipt number 20170544, amount \$ 299.00. (U.S. Treasury) (Entered: 12/08/2010)
12/10/2010	<u>4</u> (11 pgs; 4 docs)	Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. (Attachments: <u>1</u> Attorney's Certification in Support <u>2</u> Certification of Service <u>3</u> Proposed Order) (Fernandes, Anjuli) (Entered: 12/10/2010)
12/10/2010	<u>5</u> (5 pgs; 2 docs)	Application to Shorten Time (related document: <u>4</u> Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. (Attachments: <u>1</u> Proposed Order) (Fernandes, Anjuli) (Entered: 12/10/2010)
12/10/2010	<u>6</u> (4 pgs)	BNC Certificate of Mailing - Meeting of Creditors. No. of Notices: 26. Service Date 12/10/2010. (Admin.) (Entered: 12/11/2010)
12/13/2010	<u>7</u> (3 pgs)	Order to Shorten Time (related document: <u>4</u> Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) TThe following parties were served: Debtor, Debtor's Attorney, Trustee, US Trustee and Movant's Attorney. Signed on 12/13/2010. Hearing scheduled for 12/15/2010 at 10:00 AM at DHS - Courtroom 3B, Newark. (tcw) (Entered: 12/13/2010)
12/13/2010	<u>8</u> (1 pg)	Certificate of Service (related document: <u>7</u> Order to Shorten Time) filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. (Fernandes, Anjuli) (Entered: 12/13/2010)
12/13/2010	<u>9</u> (6 pgs; 2 docs)	Amended Attorney Certification in Support of Motion in support of (related document: <u>4</u> Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) filed by Anjuli M.

		Hearing Rescheduled from 12/15/10. (related document:4 Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) Hearing scheduled for 1/6/2011 at 10:00 AM at DHS - Courtroom 3B, Newark. (Purcell, Connor) (Entered: 12/15/2010)
12/15/2010	<u>10</u> (4 pgs)	BNC Certificate of Mailing - Order No. of Notices: 1. Service Date 12/15/2010. (Admin.) (Entered: 12/16/2010)
12/21/2010		Hearing Rescheduled from 1/6/11. (related document:4 Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) Hearing scheduled for 1/20/2011 at 10:00 AM at DHS - Courtroom 3B, Newark. (zlh) (Entered: 12/21/2010)
12/27/2010	<u>11</u> (1 pg)	Notice of Appearance and Request for Service of Notice.. (Bass, Patti) (Entered: 12/27/2010)
12/28/2010		Notice of Continuance of Meeting of Creditors on 2/4/2011 at 12:30 AM at Suite 1401, One Newark Center (Okechuku, Michael) (Entered: 12/28/2010)
12/29/2010	<u>12</u> (2 pgs)	Withdrawal of Document (related document:4 Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz, Hearing Rescheduled from 1/6/11.) filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio. (Fernandes, Anjuli) (Entered: 12/29/2010)
12/29/2010		Hearing Withdrawn (related document:4 Motion to Compel Release of Debtors' Checking and Savings Account Funds Frozen by Wachovia Bank Filed by Anjuli M. Fernandes on behalf of Adanurby Ortiz, John P Toribio filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) (zlh) (Entered: 12/29/2010)
12/30/2010	<u>13</u> (4 pgs)	Certificate of Service (related document: Notice of Continuance of Meeting of Creditors on 2/4/2011 at 12:30 AM at Suite 1401, One Newark Center) filed by Nicholas Fitzgerald on behalf of Adanurby Ortiz, John P Toribio. (Fitzgerald, Nicholas) (Entered: 12/30/2010)
01/12/2011	<u>14</u> (1 pg)	Notice of Appearance and Request for Service of Notice.. (Guinn, James) (Entered: 01/12/2011)
02/03/2011	<u>15</u> (2 pgs)	Certification of Completion of Instructional Course Concerning Financial Management (Official Form 23) Filed by Nicholas Fitzgerald on behalf of Adanurby Ortiz. (Fitzgerald, Nicholas) FINANCIAL MANAGEMENT CERTIFICATE AND FORM B23 NOT FILED FOR DEBTOR. Modified on 2/4/2011 (Guida, Alyson). (Entered: 02/03/2011)
02/04/2011		Correction Notice in Electronic Filing (related document:15 Certification of Completion of Instructional Course Concerning Financial Management

Document filed by Joint Debtor Adamarby Ortiz). Type of Error: FINANCIAL MANAGEMENT CERTIFICATE AND FORM B23 NOT FILED FOR DEBTOR, filed by N. FITZGERALD. PLEASE FILE FORM B23 AND FINANCIAL MANAGEMENT CERTIFICATE FOR DEBTOR, JOHN P. TORIBIO USING THE SAME EVENT. DEADLINE STILL STANDS FOR DEBTOR. (axg) (Entered: 02/04/2011)

02/04/2011	<u>16</u> (2 pgs)	Certification of Completion of Instructional Course Concerning Financial Management (Official Form 23) Filed by Nicholas Fitzgerald on behalf of John P Toribio. (Fitzgerald, Nicholas) (Entered: 02/04/2011)
02/18/2011	<u>17</u> (18 pgs)	Reaffirmation Agreement Between Debtor and Valley National Bank filed by Valley National Bank. (axg) (Entered: 02/18/2011)
03/11/2011	<u>18</u> (2 pgs)	Order Discharging Debtor. (Admin.) (Entered: 03/11/2011)
03/13/2011	<u>19</u> (4 pgs)	BNC Certificate of Mailing - Order of Discharge and BNC Certificate of Service - . No. of Notices: 27. Service Date 03/13/2011. (Admin.) (Entered: 03/14/2011)
04/05/2011	<u>20</u> (3 pgs; 2 docs)	Notice of Information for Abandonment re: 28 Luhmann Terrace, Secaucus, New Jersey 07094 filed by Michael I. Okechuku on behalf of Michael I. Okechuku. HEARING DATE IF OBJECTION FILED: 5/3/11 AT 10:00 AM. Objections due by 4/25/2011. (Okechuku, Michael) Modified TEXT on 4/6/2011 (Guida, Alyson). (Entered: 04/05/2011)
04/05/2011		Chapter 7 Trustee's Report of No Distribution: I, Michael I. Okechuku, having been appointed trustee of the estate of the above-named debtor(s), report that I have neither received any property nor paid any money on account of this estate; that I have made a diligent inquiry into the financial affairs of the debtor(s) and the location of the property belonging to the estate; and that there is no property available for distribution from the estate over and above that exempted by law. Pursuant to Fed R Bank P 5009, I hereby certify that the estate of the above-named debtor(s) has been fully administered. I request that I be discharged from any further duties as trustee. Key information about this case as reported in schedules filed by the debtor(s) or otherwise found in the case record: This case was pending for 4 months. Assets Abandoned (without deducting any secured claims): \$ 461495.00, Assets Exempt: \$ 14657.00, Claims Scheduled: \$ 900921.21, Claims Asserted: Not Applicable, Claims scheduled to be discharged without payment (without deducting the value of collateral or debts excepted from discharge): \$ 900921.21. (Okechuku, Michael) (Entered: 04/05/2011)
04/08/2011	<u>21</u> (4 pgs)	BNC Certificate of Mailing - Notice of Sale, Auction or Abandonment. No. of Notices: 33. Service Date 04/08/2011. (Admin.) (Entered: 04/09/2011)
04/26/2011	<u>22</u> (1 pg)	Certification of No Objection in re: Abandonment. (related document: <u>20</u> Notice of Information for Abandonment re: 28 Luhmann Terrace, Secaucus, New Jersey 07094 filed by Michael I. Okechuku on behalf of Michael I. Okechuku.) The Clerk hereby certifies that no objection to this Notice of Information has been filed. (axg) (Entered: 04/26/2011)
04/26/2011	<u>23</u> (1 pg)	Final Decree; The following parties were served: Trustee and US Trustee. (axg) (Entered: 04/26/2011)

04/26/2011		
11/02/2018	<u>24</u> (9 pgs; 5 docs)	Motion to Reopen Case re: Filing the Reaffirmation Agreement Between the Debtor and Select Portfolio Servicing, Inc.. Receipt Number 537359, Fee Amount \$ 260. Filed by Luis A Alum on behalf of Adanurby Ortiz, John P Toribio. Hearing scheduled for 11/27/2018 at 10:00 AM at SLM - Courtroom 3A, Newark. (Attachments: # <u>1</u> Certification # <u>2</u> Statement as to Why No Brief is Necessary # <u>3</u> Certificate of Service # <u>4</u> Proposed Order) (Veloz-Jimenez, Lucy) (Entered: 11/05/2018)
11/05/2018	<u>25</u> (1 pg)	REMARK: Notice of Hearing.(related document: <u>24</u> Motion to Reopen Case re: Filing the Reaffirmation Agreement Between the Debtor and Select Portfolio Servicing, Inc.. Receipt Number 537359, Fee Amount \$ 260. Filed by Luis A Alum on behalf of Adanurby Ortiz, John P Toribio. Hearing scheduled for 11/27/2018 at 10:00 AM at SLM - Courtroom 3A, Newark. (Attachments: # <u>1</u> Certification # <u>2</u> Statement as to Why No Brief is Necessary # <u>3</u> Certificate of Service # <u>4</u> Proposed Order) filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) . NOTICE HAS BEEN MAILED TO DEBTORS' ATTORNEY BY REGULAR US MAIL. (Veloz-Jimenez, Lucy) (Entered: 11/05/2018)
11/05/2018	26	Case Assignment. Judge Donald H. Steckroth removed from the case. Judge Stacey Meisel added to the case. (zlh) (Entered: 11/05/2018)
11/26/2018		Hearing Rescheduled from 11/27/18 (related document(s): <u>24</u> Motion to Reopen Ch. 7 Case filed by Adanurby Ortiz, John P Toribio) Hearing scheduled for 12/18/2018 at 10:00 AM at SLM - Courtroom 3A, Newark. (LucyVelozJimenez) (Entered: 11/26/2018)
11/27/2018	<u>27</u> (5 pgs)	Amended Certificate of Service (related document: <u>24</u> Motion to Reopen Ch. 7 Case filed by Debtor John P Toribio, Joint Debtor Adanurby Ortiz) filed by Luis A Alum on behalf of Adanurby Ortiz. (Alum, Luis) (Entered: 11/27/2018)
12/18/2018		Minute of Hearing Held, OUTCOME: Granted by the Court/Order to be Entered (related document(s): <u>24</u> Motion to Reopen Ch. 7 Case filed by Adanurby Ortiz, John P Toribio) (apc) (Entered: 12/18/2018)
12/18/2018	<u>28</u> (2 pgs)	Order Granting Motion To Reopen Case re: File the Reaffirmation Agreement Between The Debtor and Select Portfolio. (Related Doc # <u>24</u>). Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 12/18/2018. Closing Review date is 1/2/2019. (apc) (Entered: 12/18/2018)
12/20/2018	<u>29</u> (3 pgs)	BNC Certificate of Notice - Order No. of Notices: 1. Notice Date 12/20/2018. (Admin.) (Entered: 12/21/2018)
01/10/2019	<u>30</u> (1 pg)	Notice of Appearance and Request for Service of Notice filed by Rebecca Ann Solarz on behalf of Towd Point Mortgage Trust 2017-6, U.S. Bank National Association, as Indenture Trustee. (Solarz, Rebecca) (Entered: 01/10/2019)
01/15/2019	<u>31</u> (12 pgs)	Motion to Extend Time For Other Reason re:time to file reaffirmation agreement Filed by Luis A Alum on behalf of Adanurby Ortiz. Hearing scheduled for 2/5/2019 at 10:00 AM at SLM - Courtroom 3A, Newark. (Alum, Luis) (Entered: 01/15/2019)

02/05/2019		Minute of Hearing Held, Outcome: Matter To Be Decided On the Papers. (related document(s): <u>31</u> Motion to Extend Time filed by Adanurby Ortiz (apc) (Entered: 02/11/2019)
02/11/2019	<u>32</u> (2 pgs)	Order Denying Motion to Extend Time to File Reaffirmation Agreement (Related Doc # <u>31</u>). Service of notice of the entry of this order pursuant to Rule 9022 was made on the appropriate parties. See BNC Certificate of Notice. Signed on 2/11/2019. (apc) (Entered: 02/11/2019)
02/13/2019	<u>33</u> (3 pgs)	BNC Certificate of Notice - Order No. of Notices: 1. Notice Date 02/13/2019. (Admin.) (Entered: 02/14/2019)
02/20/2019		Bankruptcy Case Closed. (env) (Entered: 02/20/2019)
03/14/2019	<u>34</u> (12 pgs; 5 docs)	Motion to Reopen Case re: to File the Reaffirmation Agreement. Receipt Number Not Paid., Fee Amount \$ 260. Filed by Luis A Alum on behalf of Adanurby Ortiz. (Attachments: # <u>1</u> Certification # <u>2</u> Statement as to Why No Brief is Necessary # <u>3</u> Proposed Order # <u>4</u> Certificate of Service) (Veloz-Jimenez, Lucy) (Entered: 03/15/2019)
03/15/2019		Select Portfolio Servicing Inc., Interested Party, added to case (Veloz-Jimenez, Lucy) (Entered: 03/15/2019)
03/15/2019	<u>35</u> (1 pg)	Notice of Hearing for: Motion to Reopen, Appearances Required(related document: <u>34</u> Motion to Reopen Case re: to File the Reaffirmation Agreement filed by Luis A Alum on behalf of Joint Debtor Adanurby Ortiz). The following parties were served: Debtor, Debtor's Attorney, Select Portfolio, Trustee, and US Trustee. Hearing scheduled for 4/9/2019 at 10:00 AM at SLM - Courtroom 3A, Newark. (Veloz-Jimenez, Lucy) (Entered: 03/15/2019)

PACER Service Center			
Transaction Receipt			
03/17/2019 14:06:24			
PACER Login:		Client Code:	
Description:	Docket Report	Search Criteria:	10-47610-SLM Fil or Ent: filed Doc From: 0 Doc To: 99999999 Term: included Headers: included Format: html Page counts for documents: included
Billable Pages:	5	Cost:	0.50

Exhibit B -- Copy of Court's Order Dated February 11, 2019



Order Filed on February 11, 2019 by Clerk, U.S. Bankruptcy Court - District of New Jersey

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In Re:

John P. Toribio and Adanurby Ortiz

Case No.: 10-47610-SLM

Chapter: 7

Hearing Date: February 5, 2019

Judge: Stacey L. Meisel

**ORDER DENYING MOTION TO EXTEND TIME
TO FILE REAFFIRMATION AGREEMENT**

The relief set forth on the following pages, numbered two (2) through 2 is
ORDERED.

DATED: February 11, 2019

Stacey L. Meisel
Honorable Stacey L. Meisel
United States Bankruptcy Judge

A motion having been filed on January 15, 2019 by Debtors, John P. Toribio and Adanurby Ortiz, by and through their counsel Luis A Alum at Docket Number 31 for entry of an order as set forth above, the Court having considered all of the papers submitted and for good cause, it is

ORDERED the aforesaid motion is denied.

The movant shall serve this order on the debtor, any trustee and all parties who entered an appearance on this matter.